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TELEPHONE: 213/892-9200
FACSIMILE: 213/892-4818WRITER'S INTERNET ADDRESS:
pchen@fulbright.comWRITER'S DIRECT DIAL NUMBER:
213/892-9208A REGISTERED LIMITED LIABILITY PARTNERSHIP
865 SOUTH FIGUEROA STREET, 29TH FLOOR
LOS ANGELES, CALIFORNIA 90017-2576HOUSTON
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Re: Santa Fe Springs

REMARKS: Attached is the correct Stipulation for Entry of Judgment.

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FAX OPERATOR:

TIME SENT:

1 STEVEN N. SKOLNIK (State Bar No. 89086)
2 CITY ATTORNEY
3 2800 28th Street, Suite 315
Santa Monica, California 90405
Telephone: (310) 399-5084

4 COLIN LENNARD (State Bar No. 42304)
5 PATRICIA J. CHEN (State Bar No. 197719)
6 FULBRIGHT & JAWORSKI L.L.P.
Special Counsel
865 South Figueroa Street, 29th Floor
Los Angeles, California 90017-2576
Telephone: (213) 892-9200
Facsimile: (213) 680-4518

8 Attorneys for CITY OF SANTA FE SPRINGS

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES

11 PEOPLE OF THE STATE OF CALIFORNIA, ex
12 rel. Edwin F. Lowry, Director, California
Department of Toxic Substances Control and City
13 of Santa Fe Springs.,

14 Plaintiff,

15 vs.

16 CENCO REFINING COMPANY, a Delaware
17 Corporation, POWERINE OIL COMPANY, a
California Corporation and DOES 1-10,
18
19

) Case No. BC 230158
) (Related Cases VC 029214 and VC
) 031799)

) **STIPULATION FOR ENTRY OF**
) **JUDGMENT AS TO FOURTH,**
) **FIFTH, SIXTH, SEVENTH, AND**
) **EIGHTH CAUSES OF ACTION**

) Date: [REDACTED]
) Time: 10:00 a.m.
) Department: D
)
)
)

20
21 I. **PARTIES**

22 This Stipulation for Entry of Judgment ("Stipulation") is entered into between Plaintiff
23 People of the State of California ex rel. City of Santa Fe Springs (the "City") and Defendants
24 CENCO Refining Company and Powerine Oil Company (collectively "CENCO" or
25 "Defendants").
26
27
28

II. INTRODUCTION

On September 28, 1999, the Santa Fe Springs Fire Department, which is a Certified Unified Program Agency ("CUPA") pursuant to Health and Safety Code Section 25404(a)(1)(c), performed a routine inspection of CENCO's refinery facility at 12345 Lakeland Road, Santa Fe Springs, California (the "Refinery" or "Facility"). During this inspection, the CUPA discovered approximately 1600 drums being stored at the Facility as well as three soil piles. Many of the drums were in poor condition and/or were not properly labeled and it appeared that a few drums had leaked. The CUPA suspected that some of the drums contained hazardous wastes and therefore conducted an investigation of the site. The CUPA retained a consultant to sample the drums and soil piles to characterize the materials.

During the CUPA's investigation, the California Department of Toxic Substances Control ("DTSC") was performing its own investigation of the materials in certain above-ground storage tanks ("ASTs") at the Facility. On May 17, 2000, the City and Edwin F. Lowry, Director of DTSC, on behalf of the People of the State of California filed a complaint seeking declaratory and injunctive relief against Defendants and DOES 1 through 10 (the "Complaint"). The Complaint alleged numerous violations of the California's hazardous waste laws and regulations with regard to the drums, soil piles, and ASTs at the Refinery.

III. COMPLAINT

The Complaint alleges that Defendants violated provisions of the Hazardous Waste Control Law ("HWCL"), Health and Safety Code §§ 25100 et seq., and HWCL regulations, Section 66000 et seq., of Title 22, California Code of Regulations, and seeks certain corrective action, administrative and enforcement costs, and civil penalties. The First through Third Causes of Action are brought by DTSC, whereas the Fourth through Eighth Causes of Action are brought by both DTSC and the City. This Stipulation addresses only the Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action. This Stipulation has no impact on the First through Third Causes of Action which are still outstanding and will be resolved between DTSC and CENCO. A copy of the Complaint is attached hereto as Exhibit A.

1 **IV. JURISDICTION**

2 The parties agree that this Court has jurisdiction over this action pursuant to the
3 California Constitution, Article 6, section 10. Venue is proper in this Court under California
4 Health and Safety Code Section 25183. Defendants consent to and shall not challenge entry of
5 this Judgment or this Court's jurisdiction to enter, enforce, modify or terminate this Judgment.

6 **V. SETTLEMENT OF DISPUTED CLAIMS**

7 The parties agree that, and the Court by entering this Judgment finds that, settlement of
8 the Fourth through Eighth Causes of Action as alleged in the Complaint is in the public interest
9 and that entry of this Judgment pursuant to California Code of Procedure Section 664.6 without
10 further litigation is the most appropriate way to resolve this action. The parties agree that this
11 Stipulation represents a fair and reasonable settlement of the Fourth through Eighth Causes of
12 Action in the Complaint. The parties further agree that by stipulating to this Judgment,
13 Defendants do not admit any liability with respect to any of the allegations in the Complaint.

14 **VI. FINDINGS**

15 The CUPA's investigation resulted in a Final Inspection Report ("Final Report") which it
16 issued to CENCO on September 15, 2000, attached hereto as Exhibit B. Prior to the Final Report
17 the CUPA issued a draft inspection report which CENCO had the opportunity to comment on.
18 The CUPA and CENCO had meetings to resolve factual issues contained in the draft report and
19 the CUPA amended the draft report in response to issues raised by CENCO. For the purposes of
20 this settlement only, Defendants hereby agree to the factual findings contained in the Final
21 Report.

22 **VII. REPRESENTATIONS**

23 A. Disposal of Drums: CENCO certifies that it has disposed of all drums subject to
24 the Complaint, except for drums containing product or non-hazardous waste, in compliance with
25 the HWCL.

26 B. Disposal of Contaminated Soil: CENCO certifies that it has removed portions of
27 the soil that contained elevated levels of heavy metals as specified in a report prepared by Versar,
28 Inc., attached hereto as Appendix IX of Exhibit B. The remaining soil shall either be used as fill

1 beneath asphalt pavement or disposed of in accordance with applicable law. Prior to using the
2 soil as fill, CENCO agrees to demonstrate that the soil does not pose a significant health hazard
3 by performing a human health screening risk assessment based on the data CENCO has
4 submitted to the CUPA prior to the date of this Stipulation. Prior to performing the risk
5 assessment, CENCO shall provide the CUPA, for its approval, a list of assumptions and
6 parameters (e.g. where the soil will be used, length of project, exposure time for workers and/or
7 public, etc.) which will be relied upon in the risk assessment. CENCO shall provide the risk
8 assessment (or notice of disposal of the soil) to the CUPA at least 10 days before the soil is
9 moved from its present location. CENCO further agrees to comply with all requirements set forth
10 by the Regional Water Quality Control Board.

11 **VIII. ENTRY OF JUDGMENT**

12 By signing this Stipulation, the City and Defendants request that the Court enter
13 Judgment in this case on the Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action, as set
14 forth in the [Proposed] Judgment Pursuant to Stipulation ("Consent Judgment").

15 **IX. INJUNCTIVE PROVISIONS**

16 A. **Generated Waste:** CENCO agrees that it shall store all hazardous wastes that it
17 generates in a safe and orderly fashion in compliance with Title 22, California Code of
18 Regulations, section 66262.10(g) and 66262.34. CENCO further agrees to perform hazardous
19 waste determinations pursuant to Title 22, California Code of Regulations, section 66262.11.

20 B. **Storage of Hazardous Waste:** CENCO shall not store hazardous waste for more
21 than 90 days unless it obtains a permit from DTSC or obtains an extension pursuant to Title 22,
22 California Code of Regulations, section 66262.34(c).

23 C. **Fire Prevention:** CENCO agrees that at all times it shall remain in compliance the
24 current Uniform Fire Code.

25 D. **Aisle Space:** CENCO agrees that it shall maintain adequate aisle space and other
26 access as required by Title 22, California Code of Regulations, section 66265.35 and that in all
27 hazardous waste drum storage areas CENCO shall maintain aisle spaces of not less than 30
28 inches.

1 E. Separation of Incompatible Wastes: CENCO agrees that it shall comply with
2 Title 22, California Code of Regulations, section 66265.177(c).

3 F. Weekly Inspections: CENCO agrees that it shall perform weekly inspections in
4 compliance with Title 22, California Code of Regulations, section 66265.174.

5 G. Personnel Training: CENCO agrees that it shall implement personnel training in
6 compliance with Title 22, California Code of Regulations, section 66265.16.

7 H. Excluded Tanks: the above ground storage tanks including Tanks #5516, 96109,
8 96110, 10006 and 27105 which are the subject of the First through Third Causes of Action in the
9 Complaint are not subject to the injunctive provisions in this section. DTSC will resolve the
10 issues surrounding these tanks with CENCO.

11 X. CIVIL PENALTY AND REIMBURSEMENT OF COSTS

12 A. Defendants agree to pay the City \$264,622.55 ("Settlement Amount"), of which
13 \$143,942.55 is reimbursement for administrative costs the City has incurred in this matter since
14 September 1999, and \$120,680 is a civil penalty. The Settlement Amount shall be paid within
15 30 days of CENCO receiving financing. For the purposes of this Stipulation and Judgment,
16 "financing" shall mean the obtaining of funds from any financial institution or private entity
17 which funds are to be used for the construction and/or operation of the Refinery. If CENCO has
18 not obtained financing within 18 months of the entry of this Judgment, CENCO agrees to
19 immediately pay the City one-half of the Settlement Amount (\$132,311.27). Thereafter, on the
20 last day of each successive month, CENCO shall pay the remaining balance in equal monthly
21 installments, for 18 months, including interest at an annual percentage rate of 8 percent. Interest
22 shall begin to accrue immediately following the 18 months after entry of this Judgment.

23 B. Defendants shall make its payment by cashier's check, payable to "City of Santa
24 Fe Springs," and shall include on the face of such check the title and case number of this
25 proceeding. Defendants shall send payment by certified mail or overnight mail or deliver it by
26 hand to:

27 Cashier
28 City of Santa Fe Springs
Accounting Department

1 P.O. Box 2120
2 11710 East Telegraph Road
3 Santa Fe Springs, CA 90670

4 Copies of the check shall be mailed to:

5 Steven Skolnik, Esq.
6 2800 28th Street, Suite 315
7 Santa Monica, CA 90405

8 Colin Lennard, Esq.
9 865 S. Figueroa Street
10 29th Floor
11 Los Angeles, CA 90017

12 and

13 Chief Neal Welland
14 Santa Fe Springs Fire Department
15 11300 Greenstone Avenue
16 Santa Fe Springs, CA 90670

17 If Defendants fail to make the payment within 30 days of receiving financing, Defendants shall
18 pay a further penalty of \$500 per day in addition to the Settlement Amount for each day
19 Defendants fail to pay the Settlement Amount after it is due.

20 C. The method of payment set forth in Paragraph VII.A. may be modified by written
21 agreement, signed by the City and CENCO. However, the Settlement Amount, \$264,622.55,
22 shall not be modified.

23 D. Defendants agree that in the event that CENCO transfers ownership of the entire
24 Facility whereby CENCO receives funds as a result of said transfer, CENCO shall pay the City
25 the entire Settlement Amount from the proceeds of the transfer as soon as the funds are available
26 to CENCO (i.e., at the close of escrow). In any event, the transfer of ownership or operational
27 control of the facility shall not relieve Defendants of their obligations under Section X of this
28 Stipulation.

29 **XI. COVENANT NOT TO SUE BY DEFENDANTS**

30 Defendants hereby release the City, their employees, representatives, and agents from any
31 and all liability, in their official or personal capacity, arising from or relating to this litigation or
32 any inspection, enforcement or permitting activity, or other regulatory action relating to this

1 litigation. Defendants further covenant not to sue or assert any claims or causes of action against
2 the City, their employees, representatives, and agents from any and all liability, in their official
3 or personal capacity, arising from or relating to this litigation or any inspection, enforcement or
4 permitting activity, or other regulatory action relating to this litigation.

5 **XII. SCOPE OF SETTLEMENT**

6 A. This Stipulation settles only those matters specifically alleged in the Fourth, Fifth,
7 Sixth, Seventh, and Eighth Causes of Action in the Complaint. Nothing in this Stipulation shall
8 constitute or be construed as a satisfaction or release from liability for any other allegations of
9 the Complaint or for any other claims. Nothing in this Stipulation shall constitute or be construed
10 as a satisfaction or release from liability for any violations of law outside the HWCL.

11 B. Except as expressly provided in this Stipulation, nothing in this Stipulation is
12 intended, nor shall it be construed to preclude the City or any governmental agency, department,
13 board or entity from exercising its authority under any law, statute or regulation.

14 **XIII. LIABILITY**

15 The City shall not be liable for any injury or damage to persons or property resulting
16 from acts or omissions by Defendants or their directors, officers, employees, agents,
17 representatives or contractors in carrying out activities pursuant to this Stipulation. The City
18 shall not be held as a party to or guarantor of any contract entered into by Defendants or their
19 directors, officers, employees, agents, representatives or contractors in carrying out activities
20 pursuant to this Stipulation.

21 **XIV. DISMISSAL OF COMPLAINT**

22 Upon entry of the Judgment, the City shall dismiss the Fourth, Fifth, Sixth, Seventh, and
23 Eighth Causes of Action of the Complaint with prejudice.

1 **XV. MODIFICATION**

2 This Stipulation may be modified upon written approval of the parties hereto and the
3 court.

4 **XVI. SATISFACTION OF JUDGMENT**

5 The City shall comply with section 724.030 of the Code of Civil Procedure.

6 **XVII. APPLICATION OF STIPULATION**

7 This Stipulation shall apply to and be binding upon the City and Defendants and all
8 agents and successors and assigns of either of them.

9 **XVIII. AUTHORITY TO ENTER STIPULATION**

10 Each signatory to this Stipulation certifies that she or he is fully authorized by the party
11 or parties she or he represents to enter into this Stipulation, to execute it on behalf of the party or
12 parties represented, and legally to bind such party or parties.

13 **XIX. INTEGRATION**

14 This Stipulation constitutes the entire agreement among the parties and may not be
15 amended or supplemented except as provided for in the Stipulation.

16 **XX. EFFECTIVE DATE**

17 This Stipulation may be executed in two or more counterparts, each of which shall be
18 deemed an original, but all of which together shall constitute one and the same instrument. This
19 Stipulation shall become effective on the date on which the City signs this Stipulation.

20 ///

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1 **XXI. EQUAL AUTHORSHIP**

2 This Stipulation shall be deemed to have been drafted equally by all parties hereto.
3 IT IS SO STIPULATED
4

5 **For Plaintiff People of the State of California ex rel. City of Santa Fe Springs**

6
7 Dated: 8-29-01

Neal Welland
City of Santa Fe Springs

8
9 **APPROVED AS TO FORM:**

FULBRIGHT & JAWORSKI L.L.P.

10
11
12 Dated: 8/27/01

Colin Lennard
Colin Lennard
Attorneys for City of Santa Fe Springs

13
14
15 **For Defendants CENCO Refining Company and Powerline Oil Company**

16
17 Dated: _____

CENCO Refining Co.

18
19
20 Dated: 8-24-01

Vernon Paga
Powerline Oil Company
Secretary

21
22 **APPROVED AS TO FORM:**

PILLSBURY WINTHROP

23
24
25 Dated: 8-29-01

Margaret Rosegay
Margaret Rosegay
Attorneys for CENCO Refining Company
and Powerline Oil Company

XXI. EQUAL AUTHORSHIP

This Stipulation shall be deemed to have been drafted equally by all parties hereto.
IT IS SO STIPULATED

For Plaintiff People of the State of California vs rel. City of Santa Fe Springs

Dated: _____

City of Santa Fe Springs

APPROVED AS TO FORM:

FULBRIGHT & JAWORSKI L.L.P.

Dated: _____

Colin Leonard
Attorneys for City of Santa Fe Springs

For Defendants CENCO Refining Company and Powerline Oil Company

Dated: 8/28/01

[Signature]
CENCO Refining Co.

Dated: 8-24-01

[Signature]
Powerline Oil Company
[Signature]

APPROVED AS TO FORM:

PILLSBURY WINTHROP

Dated: _____

Margaret Rosegay
Attorneys for CENCO Refining Company
and Powerline Oil Company

DOCUMENT
PREPARED ON
RECYCLED
PAPER

FULBRIGHT & JAWORSKI L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP
865 SOUTH FIGUEROA STREET, 29TH FLOOR
LOS ANGELES, CALIFORNIA 90017-2576

HOUSTON
WASHINGTON, D.C.
AUSTIN
SAN ANTONIO
DALLAS
NEW YORK
LOS ANGELES
MINNEAPOLIS
LONDON
HONG KONG

TELEPHONE: 213/892-9200
FACSIMILE: 213/890-4318

WRITERS INTERNET ADDRESS:
pchen@fulbright.com

WRITER'S DIRECT DIAL NUMBER:
213/892-9208

May 18, 2000

VIA FACSIMILE

Mr. Fred Latham
City Manager
City of Santa Fe Springs
P.O. Box 2120
Santa Fe Springs, California 90670

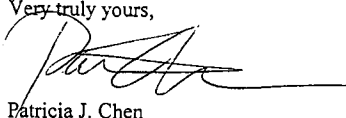
Re: CENCO Drum Enforcement

Dear Fred:

Attached is a copy of the complaint we jointly filed with the Attorney General's office on the drum, tank, and soil pile storage violations at the CENCO refinery on behalf of DTSC and the CUPA. Although the DTSC and the City are joint plaintiffs on the CUPA causes of action, we have repeatedly confirmed with the Attorney General's office and DTSC that the CUPA is the lead agency on the drum and soil pile violations.

If you have any questions, please do not hesitate to call me.

Very truly yours,



Patricia J. Chen

PJC/kmr

Enclosure

cc: Steve N. Skolnik, Esq. (via facsimile)

Mr. Bob Orpin
Chief Neal Welland
Mr. David Klunk
Mr. Steve Koester
Mr. Paul Ashworth

1 BILL LOCKYER, Attorney General
of the State of California
2 RICHARD FRANK
Chief Assistant Attorney General
3 DONALD ROBINSON
Supervising Deputy Attorney General
4 JAMES R. POTTER (State Bar No. 166992)
Deputy Attorney General
5 300 South Spring St
Los Angeles, California 90013
6 Telephone: (213) 897-2637
Fax Number: (213) 897-2802

7
8 Attorneys for Plaintiff, People of the State of
California, ex rel Edwin F. Lowry, Director,
9 California Department of Toxic Substances Control

10 STEVEN N. SKOLNIK (State Bar No. 89086)
City Attorney
2800 28th Street, Suite 315
11 Santa Monica, California 90405
Telephone: (310) 829-9843
12 Facsimile: (310) 453-2406

13 FULBRIGHT & JAWORSKI L.L.P.
COLIN LENNARD (State Bar No. 42304)
14 PATRICIA J. CHEN (State Bar No. 197719)
Special Counsel to the City of Santa Fe Springs
15 865 South Figueroa Street, 29th Floor
Los Angeles, California 90017-2576
16 Telephone: (213) 892-9200
Facsimile: (213) 680-4518

17
18 Attorneys for Plaintiff, People of the State of
California, ex rel City of Santa Fe Springs

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA

20 IN AND FOR THE COUNTY OF LOS ANGELES

21 PEOPLE OF THE STATE OF CALIFORNIA, ex)
rel. Edwin F. Lowry, Director, California)
22 Department of Toxic Substances Control and City)
of Santa Fe Springs,)

23 Plaintiffs,
24 v.

25 CENCO REFINING COMPANY, a Delaware)
Corporation, POWERINE OIL COMPANY, a)
26 California Corporation and Does 1-10,)

27 Defendants.

No.

COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE
RELIEF

(Calif. Health and Safety Code
sections 25189 and 25189.2)

28 The People of the State of California -- ex rel. Edwin F. Lowry, Director of the

1 Department of Toxic Substances Control (hereafter "DTSC") and the City of Santa Fe Springs
2 (hereafter the "City") -- allege as follows:

3 PLAINTIFFS

4 1. DTSC is a public agency of the State of California organized and existing under
5 and pursuant to sections 58000 *et seq.* of the Health and Safety Code. DTSC is the state agency
6 responsible for the administration of the Hazardous Waste Control Law, Chapter 6.5 of division
7 20 of the California Health and Safety Code, sections 25100 *et seq.* ("HWCL").

8 2. Edwin F. Lowry is the Director of DTSC.

9 3. The City of Santa Fe Springs Fire Department is a Certified Unified Program
10 Agency ("CUPA") as defined by Health and Safety Code section 25404(a)(1)(C).

11 4. Pursuant to sections 25181(a) and 25182 of the California Health and Safety
12 Code, the Attorney General of the State of California is authorized, at the request of DTSC, to
13 commence an action in the name of the People for civil penalties and injunctive relief under the
14 HWCL.

15 5. Pursuant to sections 25181(b) and 25182 of the California Health and Safety
16 Code, the City Attorney is authorized, at the request of the CUPA, to commence an action in the
17 name of the People for civil penalties and injunctive relief under the HWCL.

18 DEFENDANTS

19 6. Defendant Powerine Oil Company (hereafter "Powerine") is, and at all times
20 relevant here was, a California corporation. Powerine owned and operated the oil refinery
21 located at 12345 Lakeland Road in the City of Santa Fe Springs (hereafter "the Lakeland Road
22 Refinery") from approximately 1950 to approximately August of 1998.

23 7. Powerine is a "person" as defined at California Health & Safety Code Section
24 25118. Powerine was an "owner and/or operator," as defined at California Code of Regulations,
25 Title 22, Div. 4.5 (hereafter "Title 22, C.C.R."), Section 66260.10.

26 8. When reference is made in this complaint to any act of Powerine such allegation
27 shall mean that each defendant, or employees or representatives of Powerine did, or authorized,
28 such acts, or recklessly and carelessly failed and omitted adequately or properly to supervise,

1 control or direct their employees or representatives while engaged in the management, direction,
2 operation or control of the affairs of Powerine and did so while acting within the course and
3 scope of their employment or agency.

4 9. Defendant Cenco Refining Company (hereafter "Cenco") is a Delaware
5 Corporation that was formed in March of 1998 for the purpose of purchasing and operating the
6 Lakeland Road Refinery. Cenco currently owns and operates the Lakeland Road Refinery.

7 10. Cenco is a "person" as defined at California Health & Safety Code Section 25118.
8 Cenco is an "owner and/or operator," as defined at Title 22, C.C.R., Section 66260.10.

9 11. When reference is made in this complaint to any act of Cenco such allegation
10 shall mean that each defendant, or employees or representatives of Cenco, did, or authorized,
11 such acts, or recklessly and carelessly failed and omitted adequately or properly to supervise,
12 control or direct their employees or representatives while engaged in the management, direction,
13 operation or control of the affairs of Cenco and did so while acting within the course and scope
14 of their employment or agency.

15 12. Defendants Does 1-10 are the officers, agents, employees, servants or others
16 acting in interest or concert with Powerine and/or Cenco. Plaintiffs are ignorant of the true
17 names of defendants sued herein as Does 1-10. When the names of these defendants have been
18 ascertained, Plaintiffs will seek leave to amend the complaint to substitute the true name of each
19 Doe defendant in place of the fictitious name.

20 JURISDICTION AND VENUE

21 13. This court has jurisdiction pursuant to Cal. Const. Art. 6, section 10. Venue is
22 proper under California Health and Safety Code Section 25183.

23 STATEMENT OF THE CASE

24 14. Plaintiffs seek civil penalties and injunctive relief against Cenco and Powerine
25 pursuant to sections 25181, 25184, 25189 and 25189.2 of the California Health and Safety Code
26 for repeated and continuing violations of the HWCL, which governs the operation of hazardous
27 waste generation, storage, transportation, treatment, and disposal.
28

STATUTORY AND REGULATORY BACKGROUND

15. The State of California has enacted a comprehensive statutory and regulatory framework for the generation, handling, treatment, transport and disposal of hazardous wastes. The framework contained in the HWCL, and its implementing regulations, which are found at California Code of Regulations, Title 22, C.C.R., Sections 66260.1 *et seq.*, mandate a "cradle to grave" registration, tracking, storage, treatment and disposal system for the protection of the public from the risks posed by hazardous wastes.

16. California administers the HWCL in lieu of federal administration of the federal Resource Conservation and Recovery Act, which is codified at 42 U.S.C. section 9601 *et seq.* (*Health and Saf. Code §§ 25101, 25159*) Federal law provides that California can administer the HWCL in lieu of the federal act only so long as California's program is equivalent to and consistent with the federal program and California provides adequate enforcement authority to the administering agencies. (*42 U.S.C. § 3006(b)*). California's program must be as stringent and no less extensive than the federal program in every respect. (*40 CFR § 271.1 et seq.*)

17. The HWCL charges DTSC with the responsibility to adopt standards and regulations for the management of hazardous waste to protect the public health and environment. (*Health and Saf. Code § 25150*). Accordingly, DTSC has promulgated regulations setting forth numerous and extensive health-protective requirements for the day-to-day operation of hazardous waste generators and facilities. (*See Title 22, C.C.R., §§ 66262.1 et seq. and 66265.1 et seq.*)

18. The Unified Hazardous Waste and Hazardous Materials Management Regulatory Program allows the state to certify CUPAs as local agencies authorized to enforce the requirements of the HWCL within the jurisdiction of the CUPA. (*See Health and Saf. Code §§ 25404 and 25404.2*).

19. Any company that wishes to store hazardous waste for more than ninety days must first obtain authorization from DTSC or the CUPA. No owner or operator shall "accept, treat, store, or dispose of a hazardous waste . . . unless the owner or operator holds a hazardous waste facilities [sic] permit or other grant of authorization from the department to use and operate the facility, station, area, or site." (*Health and Saf. Code §§ 25123.3, 25201.*)

20. A company that generates a hazardous waste may store that hazardous waste onsite for up to ninety days without authorization provided that the company complies with the requirements specified in Title 22, C.C.R., section 66262.34.

21. A company that generates a waste shall determine if the waste is a hazardous waste using the methods outlined in Title 22, C.C.R., section 66262.11. If the waste is hazardous, the company must manage it in accordance with the regulations governing generators of hazardous wastes. (*See Title 22, C.C.R. § 66262.11(d)*).

22. A company that generates a hazardous waste shall maintain and operate its facilities to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment. (*See Title 22, C.C.R. §§ 66262.34(a)(4) and 66265.31*).

23. A company must not store or transport containers holding hazardous waste in such a manner which may rupture the container or cause it to leak. (*See Title 22, C.C.R. §§ 66262.34(a)(1)(A) and 66265.173*).

DEFINITION OF HAZARDOUS WASTE UNDER THE HWCL

24. Health and Safety Code section 25124(a) defines a "'waste' [as] any solid, liquid, semisolid, or contained gaseous discarded material that is not excluded by this chapter or by regulations adopted pursuant to this chapter." "Discarded materials" include any material that is "[r]ecycled or accumulated, stored, or treated before recycling except as provided in Section 25143.2." (*Id. at 25124(b)(2)*).

25. A "hazardous waste" is a waste that meets the criteria of hazardousness established by DTSC. (*Health and Saf. Code § 25117*.) Those criteria includes both lists of hazardous wastes, such as wastes produced by specific processes, and characteristics of hazardous wastes, i.e. any waste that meets the criteria. (*Title 22, C.C.R., §66261.1 et seq.*) A "recyclable material" "is a hazardous waste that is capable of being recycled." (*Id. at 25120.5*.)

26. Recyclable materials that are hazardous are not excluded from classification as a waste pursuant to Health and Safety Code section 25143.2 if accumulated speculatively (Health

1 and Saf. Code § 25143.2 (e)(4)). Thus, assuming that they meet the criteria for hazardousness,
2 "materials accumulated speculatively" "are hazardous wastes and subject to full regulation under
3 this chapter, even if the recycling involves use, reuse, or return to the original process." (*Health*
4 *and Saf. Code § 25143.2(e)(4)*).

5 27. Equipment used for the storage of oil-bearing materials at a petroleum refinery is
6 conditionally exempt from the HWCL. (*Health and Saf. Code § 25144 (c)*). One of the
7 conditions for this exemption is that the oil-bearing material would otherwise be excluded from
8 classification as a waste pursuant to Health and Safety Code section 25143.2. (*Health and Saf.*
9 *Code § 25144 (c)(6)*) Also, the exclusion does not apply if the recovered oil or oil-bearing
10 material is speculatively accumulated. (*Health and Saf. Code §§ 25144.(c)(4), 25144.(c)(6), 40*
11 *C.F.R. § 261.4(a)(12)*).

12 28. The HWCL regulations state that with specified exceptions a material is
13 "accumulated speculatively" if it is "is accumulated before being recycled." (*Title 22, C.C.R., §*
14 *66260.10*)

15 ENFORCEMENT AUTHORITY UNDER THE HWCL

16 29. Section 25189(b) of the Health and Safety Code makes any person who
17 intentionally or negligently violates any provision of the HWCL, or any permit, rule, regulation,
18 standard, or requirement issued or promulgated pursuant to the HWCL liable for a civil penalty
19 not to exceed \$25,000 for each violation of a separate provision or, for continuing violations,
20 \$25,000 for each day that a violation continues.

21 30. Section 25189.2(b) of the Health and Safety Code makes any person who non-
22 intentionally or non-negligently violates any provision of the HWCL, or any permit, rule,
23 regulation, standard, or requirement issued or promulgated pursuant to the HWCL liable for a
24 civil penalty not to exceed \$25,000 for each violation of a separate provision or, for continuing
25 violations, \$25,000 for each day that a violation continues.

26 31. Section 25188 of the Health and Safety Code makes any person who does not
27 comply with a schedule for compliance issued pursuant to Health and Safety Code section 25187
28 liable for a civil penalty of not more than twenty-five thousand dollars for each day of

1 noncompliance.

2 32. Health and Safety Code section 25181(a) provides that when DTSC
3 "determines that any person has engaged in, is engaged in, or is about to engage in
4 any acts or practices which constitute or will constitute a violation of any
5 provision of this chapter, or any rule, regulation, permit, covenant, standard,
6 requirement, or order issued, promulgated, or executed thereunder, . . . the
7 Attorney General may apply to the superior court for an order enjoining those acts
8 or practices, or for an order directing compliance, and upon a showing by the
9 department that the person has engaged in or is about to engage in any such acts
10 or practices, a permanent or temporary injunction, restraining order, or other order
11 may be granted."

12 33. Health and Safety Code section 25181(b) provides that when the CUPA
13 "determines that any person has engaged in, is engaged in, or is about to engage in
14 any acts or practices which constitute or will constitute a violation of any
15 provision of this chapter, or any rule, regulation, permit, covenant, standard,
16 requirement, or order issued, promulgated, or executed thereunder, . . . the city
17 attorney of the city in which those acts or practices occur . . . may apply to the
18 superior court for an order enjoining such acts or practices, or for an order
19 directing compliance, and upon a showing by the unified program agency that the
20 person has engaged in or is about to engage in any such acts or practices, a
21 permanent or temporary injunction, restraining order, or other order may be
22 granted."

23 34. Health and Safety Code section 25184 provides that in civil actions brought
24 pursuant to the HWCL in which an injunction or temporary restraining order is sought:
25 "it shall not be necessary to allege or prove at any stage of the proceeding that
26 irreparable damage will occur should the temporary restraining order, preliminary
27 injunction, or permanent injunction not be issued; or that the remedy at law is
28 inadequate, and the temporary restraining order, preliminary injunction, or

1 permanent injunction shall issue without such allegations and without such
2 proof."

3 35. DTSC and the CUPA have determined that Defendants have engaged in, and
4 unless enjoined and restrained by this Court will continue to engage in, acts and practices which
5 constitute violations of the HWCL and the regulations issued or promulgated thereunder, as more
6 fully set forth below.

7 36. Each violation renders Defendants liable for civil penalties pursuant to Health and
8 Safety Code sections 25189(b), 25189.2(b) and/or 25188, according to proof. Each continuing
9 violation also subjects Defendants to injunctive relief pursuant to Health and Safety Code
10 sections 25181 and 25184.

11 37. DTSC has requested the Attorney General to apply to the Superior Court for an
12 injunction enjoining Defendants from continuing these violations.

13 38. The CUPA has requested the City Attorney to apply to the Superior Court for an
14 injunction enjoining Defendants from continuing these violations.

15 39. DTSC has incurred investigation costs to determine whether Defendants have
16 been in compliance with the State's hazardous waste laws and regulations and with any
17 agreements previously entered by Defendants. DTSC has expended and will continue to expend
18 State funds for such costs of investigation in order to determine whether Defendants are in
19 compliance with the State's hazardous waste laws and regulations and whether Defendants are
20 complying with any orders issued by DTSC and with any temporary restraining order or
21 preliminary or permanent injunction issued by the Court.

22 GENERAL ALLEGATIONS

23 40. Plaintiffs are informed and believe and based thereon allege the following:

24 a. The predecessor company to Powerine constructed the Lakeland Road
25 Refinery in approximately 1930. That company was reformulated as Powerine in
26 approximately 1950.

27 b. Powerine had substantial financial difficulties in the 1980's and 1990's. In
28 mid-1995 Powerine stopped operating the facility and terminated the majority of its

1 operations and the majority of its workforce.

2 c. At the time Powerine stopped operations, at least a dozen large tanks at the
3 facility contained oil, other petroleum derived materials, and other hazardous materials.
4 Powerine and its successor Cenco continue to store a very large portion of that material at
5 the Lakeland Road Refinery.

6 d. For several years Powerine explored a variety of options for disposing of
7 the refinery. In 1995 and 1997, Powerine entered into agreements to sell the Lakeland
8 Road Refinery to companies that would dismantle the refinery and transport it to other
9 countries. Neither of those agreements was implemented. Powerine also made several
10 attempts to obtain financing to restart the refinery in Santa Fe Springs.

11 e. In March of 1998, Cenco began pre-purchase investigations of the
12 Lakeland Road Refinery.

13 f. In 1998, Powerine sold the Lakeland Road Refinery to Cenco.

14 41. In the summer of 1997, DTSC received a complaint that Powerine was illegally
15 storing hazardous waste at the Lakeland Road Refinery. On August 12, 1997 DTSC inspected
16 the Lakeland Road Refinery and verified that Powerine was illegally storing hazardous waste in
17 tanks without authorization. Those materials posed a potential health and safety risk. Even if
18 Powerine had intended to recycle the materials in question when it began storing those materials,
19 over a period of two years little if any of the materials had been recycled or transferred for
20 recycling; by virtue of the speculative accumulation provisions, any recyclable materials in the
21 tank were subject to regulation as a hazardous wastes. DTSC issued Powerine a Summary of
22 Violations and directed Powerine to correct those violations. DTSC again inspected the Lakeland
23 Road Refinery in January of 1998, took additional samples of the stored materials and again
24 confirmed that Powerine was storing hazardous waste without authorization.

25 42. In April of 2000 DTSC again inspected the Lakeland Road Facility. DTSC
26 identified additional tanks in which Cenco was illegally storing hazardous waste and directed
27 Cenco to correct its violations.

28 43. In 1981, Powerine sought and obtained authorization to store and/or treat

1 hazardous waste in an alkylation neutralization unit ("ANU"). That authorization was extremely
2 narrow. In 1992, Powerine notified DTSC that it would no longer manage hazardous waste in
3 ANU and thereupon Powerine's authorization to do so expired. Since that notification, neither
4 Powerine nor Cenco has had authorization to engage in any activity that required hazardous
5 waste management facility permit from DTSC.

6 44. In September 1999, during a routine inspection of the Cenco Refinery, the CUPA
7 found that approximately 1600 drums were stored in six areas at the Refinery. Many of the
8 drums were in poor condition, improperly marked, and unidentified, and some drums of
9 hazardous waste were stored longer than 90 days in violation of the HWCL. These violations are
10 described with more particularity in the Fourth, Fifth, Sixth, and Seventh Causes of Action.

11 45. The CUPA also discovered a soil pile in one of the areas to the northeast corner of
12 Bloomfield and Lakeland west of the coke barn ("Bloomfield Property"). Plaintiffs are informed
13 and believe and thereon allege that this soil was transported from the south side of Lakeland
14 between Bloomfield and Norwalk ("Lakeland Property"), as well as from other locations at the
15 Refinery, to the Bloomfield Property.

16 46. The CUPA subsequently cordoned the areas where the drums and soil pile were
17 located and restricted Cenco's access to these areas as it performed its investigation of potential
18 violations of the HWCL.

19 47. In February 2000, a consultant was retained by the City to characterize the drums
20 and the soil pile previously referred to herein. The characterization performed by the consultant
21 confirmed that Cenco violated the HWCL by storing hazardous waste for longer than 90 days
22 without a permit, failing to perform proper waste determinations, failing to prevent releases, and
23 storing hazardous waste in improperly labeled and poorly maintained containers. The CUPA
24 further found that Cenco had improperly characterized and stored the soil pile at its present
25 location at the Refinery. These violations are described with more particularity in the Eighth
26 Cause of Action below.
27
28

1 FIRST CAUSE OF ACTION

2 (Illegal Storage of Hazardous Waste in Tanks)

3 (Against Defendant Powerine By Plaintiff DTSC)

4 48. Paragraphs 1 through 47 are realleged as if fully set forth herein.

5 49. Health and Safety Code section 25201(a) makes illegal any storage, treatment
6 and/or disposal of hazardous waste that is not authorized by DTSC or by statute.

7 50. DTSC is informed and believes and thereon alleges that when Powerine ceased
8 operating in 1995, Powerine was storing liquid and sludges in tanks.

9 51. The materials in Tanks 10006 and 27105, and possibly other tanks, were
10 hazardous waste at the time Powerine sold the Lakeland Road Refinery to Cenco.

11 52. DTSC is informed and believes and thereon alleges that the materials in Tanks
12 10006 and 27105 were largely undisturbed between 1995 and the time that Powerine sold the
13 Lakeland Road Refinery to Cenco. DTSC therefore alleges that the material in those tanks is
14 regulated as a hazardous waste, that Powerine speculatively accumulated that hazardous waste,
15 and that Powerine illegally stored that hazardous waste for more than two years.

16 53. Powerine has never applied for authorization to store hazardous waste in tanks
17 10006 and 27105, nor has DTSC authorized Powerine to store hazardous waste in those tanks.

18 54. Defendant Powerine violated Health and Safety Code section 25201(a) in that it
19 stored hazardous waste in tanks without authorization.

20 SECOND CAUSE OF ACTION

21 (Illegal Storage of Hazardous Waste in Tanks)

22 (Against Defendant Cenco By Plaintiff DTSC)

23 55. Paragraphs 1 through 54 are realleged as if fully set forth herein.

24 56. In its January 2000 inspection of the Lakeland Road Refinery, DTSC determined
25 that Cenco was storing hazardous wastes in certain tanks at the Refinery including, but not
26 limited to, some and possibly all of the following: Tank 10006, Tank 1002, Tank 20014, Tank
27 2030, Tank 27093, Tank 27105, Tank 3012, Tank 3072, Tank 5516, Tank 79022, Tank 96090,
28 Tank 96109, and Tank 96110.

57. DTSC is informed and believes and thereon alleges that since purchasing the refinery Cenco has not removed the materials in the tanks listed in paragraph 56. DTSC therefore alleges that the materials in those tanks are regulated as a hazardous waste, that Cenco has illegally stored those hazardous wastes for more than eighteen months and that Cenco continues to illegally store that hazardous waste.

58. Cenco has never applied for, nor has DTSC ever given Cenco, authorization to store hazardous waste in any of the tanks listed in paragraph 56.

59. Defendant Cenco violated and continues to violate Health and Safety Code section 25201(a) in that it is storing hazardous waste in tanks without authorization.

THIRD CAUSE OF ACTION

(Illegal Storage of Hazardous Waste on the Ground; Unsafe Operation)

(Against Defendants Cenco and Powerine by Plaintiff DTSC)

60. Paragraphs 1 through 59 are realleged as if fully set forth herein.

61. Title 22, C.C.R., sections 66262.34(a)(4) and 66265.31 require a hazardous waste generator to conduct its operations in a manner to minimize the possibility of any unplanned sudden or non-sudden release of hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

62. In April of 2000, DTSC inspectors observed four heat exchanger units coated with dust and/or dried sludge sitting on a cement pad without a cover. DTSC inspectors also observed that wind had caused the dispersion of dust and dried sludge from the exchanger units to the surrounding ground. DTSC is informed and believes and thereon alleges that the heat exchanger units had been sitting in that location since 1995.

63. Heat exchanger sludge is a listed hazardous waste: K050. (Title 22, C.C.R., § 66261.32.)

64. Defendants Powerine and Cenco violated Health and Safety Code section 25201(a) in that they stored a hazardous waste without authorization.

65. Defendants Powerine and Cenco violated Title 22, C.C.R., sections 66262.34(a)(4) and 66265.31 in that they allowed hazardous waste to disperse to the ground.

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1 waste were in poor condition and a few drums had leaks in them in violation of Title 22, C.C.R.
2 sections 66262.34(a)(1)(A) and 66265.173. Furthermore, in one instance, Cenco failed to
3 separate incompatible wastes by storing a drum of flammable material next to a drum of sulfuric
4 acid in violation of Title 22, C.C.R. sections 66262.34(a)(1)(A) and 66265.177(c).

5 73. The City further alleges that Powerine and Cenco failed to maintain proper aisle
6 space for the drums in four areas, failed to perform weekly inspections of the storage areas, and
7 failed to implement personnel training in violation of Title 22, C.C.R. sections
8 66262.34(a)(1)(A), 66262.34(a)(4), 66265.35, 66265.174, and 66265.16.

9 SEVENTH CAUSE OF ACTION

10 (Failure to Minimize the Possibility of a Fire, Explosion, or
11 Release to the Environment)

12 (Against Defendants Cenco and Powerine by Plaintiffs DTSC and City of Santa Fe Springs)

13 74. Paragraphs 1 through 74 are realleged as if fully set forth herein.

14 75. The City is informed and believes and thereon alleges that as a result of its
15 improper waste determination, storage of hazardous waste without a permit, and improper drum
16 management, as set forth above, Powerine and Cenco failed to minimize the possibility of a fire,
17 explosion, or release to the environment. In fact, at least one drum leaked hazardous waste
18 (flammable ink) onto the ground. As such, Defendants Powerine and Cenco violated and
19 continue to violate Title 22, C.C.R. sections 66262.34(a)(4) and 66265.31.

20 EIGHTH CAUSE OF ACTION

21 (Improper Characterization and Storage of Contaminated Soil)

22 (Against Defendant Cenco by Plaintiffs DTSC and City of Santa Fe Springs)

23 76. Paragraphs 1 through 75 are realleged as if fully set forth herein.

24 77. The City is informed and believes and thereon alleges that Cenco transported
25 contaminated soil from the Lakeland Property to the Bloomfield Property. The CUPA
26 discovered this soil pile during its routine inspection in September 1999.

27 78. Prior to transporting and storing the soil, Cenco had not performed any analysis
28 on the soil for metals. As a result of the characterization performed by the CUPA's consultant,

1 the CUPA found that the zinc concentration in the soil exceeded the Threshold Limit
2 Concentration (TTLC) for zinc. As such, Cenco improperly characterized the soil in violation of
3 Title 22, C.C.R. section 66261.11.

4 79. The City is informed and believes and thereon alleges that Cenco stored this
5 contaminated soil on the Bloomfield Property for longer than 90 days without a permit.

6 80. Cenco and Powerine have never applied for authorization to store the
7 contaminated soil at the Bloomfield Property, nor has the CUPA ever given Cenco or Powerine
8 any authorization to store the contaminated soil. As such, Cenco violated and continues to
9 violate Health and Safety Code section 25201.

10 REQUEST FOR RELIEF

11 DTSC requests that the Court grant the relief that follows:

12 A. Enter a judgment that Powerine and Does 1-10 are required to pay civil penalties
13 to Plaintiffs according to proof pursuant to the First and Third Causes of Action;

14 B. Enter a judgment that Cenco and Does 1-10 are required to pay civil penalties to
15 Plaintiffs according to proof pursuant to the Second and Third Causes of Action;

16 C. Enter temporary restraining orders, preliminary injunctions, permanent
17 injunctions, or other orders requiring Cenco and DOES 1-10 to comply with the applicable
18 permits, the HWCL and/or the regulations adopted thereunder; and

19 D. Grant Plaintiffs their costs of investigation; and

20 E. Grant Plaintiffs costs of suit herein; and.

21 F. Grant such other and further relief as the court deems just and proper.

22 The City and DTSC request that the Court grant the relief that follows:

23 A. Enter a judgment that Powerine and Does 1-10 are required to pay civil penalties
24 to Plaintiffs according to proof pursuant to the Fourth, Fifth, Sixth, and Seventh Causes of
25 Action;

26 B. Enter a judgment that Cenco and Does 1-10 are required to pay civil penalties to
27 Plaintiffs according to proof pursuant to the Fourth, Fifth, Sixth, Seventh, and
28 Eighth Causes of Action;

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PAGE 2/

C. Enter temporary restraining orders, preliminary injunctions, permanent injunctions, or other orders requiring Cenco and DOES 1-10 to comply with the applicable permits, the HWCL and/or the regulations adopted thereunder; and

E. Grant the City costs of suit herein; and

F. Grant such other and further relief as the court deems just and proper.

Respectfully submitted,

Dated: May 17, 2000

BILL LOCKYER, Attorney General
of the State of California
RICHARD FRANK
Chief Assistant Attorney General
DONALD ROBINSON
Supervising Deputy Attorney General


By:


JAMES POTTER

Deputy Attorney General Attorneys for Plaintiff, People of the State of California, ex rel Edwin F. Lowry, Director, California Department of Toxic Substances Control

STEVEN N. SKOLNIK, City Attorney
FULBRIGHT AND JAWORSKI L.L.P.

By:


PATRICIA J. CHEN
Attorneys for Plaintiff, People of the State of California, ex rel City of Santa Fe Springs



California Regional Water Quality Control Board Los Angeles Region

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Environmental
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Internet Address: <http://www.swrcb.ca.gov/rwqcb4>



Gray Davis
Governor

October 25, 2002

Mr. Michael J. Levy
Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814

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**PREPARATION OF ADMINISTRATIVE RECORD – IN THE MATTER OF PETITION
OF PDC NORWALK, LLC (FAILURE TO ISSUE CLEANUP AND ABATEMENT
ORDER FOR CENCO REFINERY), LOS ANGELES REGION
SWRCB/OCC FILE A-1490 (REGIONAL BOARD SLIC FILE NO. 318A)**

Dear Mr. Levy:

We are transmitting, herein, the pertinent Administrative Record in response to the above named petition for your review. However, we reserve the right to augment the Administrative Record, as necessary.

Should you have any questions or need more information, please contact Mr. Paul Cho at (213) 576-6721 or Mr. J.T. Liu at (213) 576-6667.

Sincerely,

Dennis A. Dickerson
Executive Officer

Enclosures

cc: See Interested Party list and corresponding addressees

California Environmental Protection Agency

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption
For a list of simple ways to reduce demand and cut your energy costs, see the tips at: <http://www.swrcb.ca.gov/news/echallenge.html>



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MAILING LIST

Michael Lauffer, Office of Chief Counsel, State Water Resources Control Board
Robert Sams, Office of Chief Counsel, State Water Resources Control Board
Gorden Innes, Division of Water Quality, State Water Resources Control Board
David Bacharowski, Los Angeles Regional Water Quality Control Board
Arthur Heath, Los Angeles Regional Water Quality Control Board
Ju-Tseng Liu, Los Angeles Regional Water Quality Control Board
Paul Cho, Los Angeles Regional Water Quality Control Board
Frederick Latham, City of Santa Fe Springs
—Dave Klunk, City of Santa Fe Springs Fire Department
Sayreh Amir, State Department of Toxic Substances Control
Larry Brown, South Coast Air Quality Management District
Ira Levin, PDC Norwalk, LLC
Joel Moskowitz, Moskowitz, Brestoff, Winston & Blinderman, LLP
CT Corporation System, CENCO Refining Company
Mike Barranco, CENCO Refining Company
Mark Miller, Robertson Properties Group
Sabrina Burton, Robertson Properties Group
David Isola, Isola Bowers LLP
Russell Juncal, Ground Zero Analysis, Inc.

California Environmental Protection Agency

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption

For a list of simple ways to reduce demand and cut your energy costs, see the tips at: <http://www.swrcb.ca.gov/news/echallenge.html>



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Petition of
PDC Norwalk, LLC

SWRCB/OCC File A-1490

SWRCB
Office of Chief Counsel
**INTERESTED PERSONS
MAILING LIST**

09-17-02

Los Angeles
Regional Water Quality Control Board
Failure to Issue Cleanup and Abatement
Order for Cenco Refinery

Joel S. Moskowitz, Esq.
Moskowitz, Brestoff,
Winston & Blinderman, LLP
1880 Century Park East, Suite 350
Los Angeles, CA 90067-1603

PDC Norwalk, LLC
Attention: Mr. Ira Levin
Executive Vice President
120 North Robertson Boulevard
Los Angeles, CA 90048-3115

David R. Isola, Esq.
Isola Bowers LLP
701 South Ham Lane, 2nd Floor
Lodi, CA 95242

CT Corporation System
Cenco Refining Company
818 West Seventh Street
Los Angeles, CA 90017

Dennis Dickerson
Executive Officer
Los Angeles Regional Water
Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Michael J. Levy, Esq.
Office of Chief Counsel
State Water Resources Control Board
1001 I Street [95814]
P.O. Box 100
Sacramento, CA 95812-0100

Michael A.M. Lauffer, Esq.
Office of Chief Counsel
State Water Resources Control Board
1001 I Street [95814]
P.O. Box 100
Sacramento, CA 95812-0100

Bob Sams, Esq.
Office of Chief Counsel, SWRCB
c/o Los Angeles, RWQCB
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Gordon Innes, Program Support Unit
Division of Water Quality
State Water Resources Control Board
1001 I Street [95814]
P.O. Box 944213
Sacramento, CA 95812-2130

David A. Bacharowski
Assistant Executive Officer
Los Angeles Regional Water
Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Arthur G. Heath, Section Chief
Los Angeles Regional Water
Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Paul Cho
Associate Engineering Geologist
Los Angeles Regional Water
Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Sayreh Amir
California Environmental
Protection Agency
Department of Toxic Substances
Control, Region 3
1011 N. Grandview Avenue
Glendale, CA 91201

Dave Klunk
Santa Fe Springs Fire Department
11300 Greenstone Avenue
Santa Fe Springs, CA 90670

Frederick Latham, City Manager
City of Santa Fe Springs
11710 E. Telegraph Road
Santa Fe Springs, CA 90670

Larry Brown
South Coast Air Quality
Management District
21865 E. Copley Drive
Diamond Bar, CA 91765

Mike Barrance
CENCO Refining Company
12345 Lakeland Road
Santa Fe Springs, CA 90670

Sabrina Burton
Robertson Properties Group
120 North Robertson Boulevard
Los Angeles, CA 90048-3115

Mark Miller
Robertson Properties Group
120 North Robertson Boulevard
Los Angeles, CA 90048-3115

Russell Juncal
Ground Zero Analysis, Inc.
1965 Hill Road
Hornbrook, CA 96044-9773

CERTIFICATION

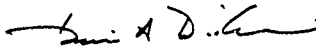
State of California

County of Los Angeles

This is to certify that the enclosed material, consisting of 146 total pages including exhibits, constitute, to the best of my knowledge, a true and correct copy of the written administrative record of the California Regional Water Quality Control Board, Los Angeles Region, in the matter of PDC Norwalk, LLC (Failure to Issue Cleanup and Abatement Order for Cenco Refinery), Los Angeles Region.

Case No. SWRCB/OCC File A-1490

Executed at 320 W. 4th Street, #200, in the County of Los Angeles this 25th day of October, 2002.



Dennis A. Dickerson, Executive Officer

**SUMMARY OF RECORD
SWRCB/OCC FILE A-1490**

1. Cleanup and Abatement Order No. 97-118 issued on August 25, 1997 for the subject site including Provision 1 which requires cleanup and abatement of onsite and offsite soil and groundwater contamination originating from the CENCO Refinery and Lakeland Property.
2. October 25, 2001 letter from the Fire Chief of the City of Santa Fe Springs to Mr. Dennis Dickerson regarding detections of high levels of methane up to 28% and gasoline vapors up to 20,200 parts per million at the Pacific Distribution Center and other properties in the vicinity of CENCO.
3. November 5, 2001 letter from Mr. R. Glenn Stillman of Alaska Petroleum Environmental Engineering, Inc. to Ms. June Christman of CENCO providing two soil gas reports which are referenced in the October 25, 2002 letter from the Fire Chief to Mr. Dennis Dickerson. This transmittal was requested based upon Regional Board staff telephone discussion with Ms. June Christman on October 31, 2001 and Mr. R. Glenn Stillman on October 30, 2001 for CENCO's response.
4. December 17, 2001 letter from Regional Board staff to Ms. June Christman of CENCO requesting status update of a supplemental soil investigation, preparation of a remedial action plan, and human health risk assessment workplan to be submitted by January 31, 2002.
5. January 31, 2002 letter from Ms. June Christman of CENCO to Regional Board staff requesting an extension.
6. February 6, 2002 letter from Mr. Joel Moskowitz to Mr. Dennis Dickerson requesting for Regional Board action.
7. February 8, 2002 letter from Mr. Dennis Dickerson to Ms. June Christman of CENCO requesting soil gas remediation and technical reports per California Water Code section 13267 and Cleanup and Abatement Order No. 97-118.
8. On February 8, 2002, Mr. Dennis Dickerson met with the Fire Chief of Santa Fe Springs to discuss the soil gas problem (stated in the February 13, 2002 letter from the Fire Chief).
9. February 13, 2002 letter from the Fire Chief of the City of Santa Fe Springs to Mr. Dennis Dickerson stating that the soil gas report compiled by Alaska Petroleum Environmental Engineering, Inc. (and attached to his October 25, 2001 letter to Mr. Dennis Dickerson) was not reviewed by the Fire Department; and that the Fire Department's own sampling performed on February 8, 2002 did not indicate there is

any danger from explosive levels of methane in the area. Also stated that the Fire Department would occasionally check the area with a combustible gas indicator to reassure that the methane problem does not become dangerous.

10. February 13, 2002 letter from Mr. David Isola representing CENCO to Mr. Dennis Dickerson acknowledging that CENCO intends to timely and appropriately respond to the demand by Regional Board.
11. February 14, 2002 meeting between CENCO and Regional Board. CENCO submitted February 15, 2002 letter to Regional Board staff summarizing discussion held at the February 14, 2002 meeting.
12. CENCO submitted workplan dated February 15, 2002, entitled *Workplan for Characterization of Vadose Zone Methane*, prepared by Ground Zero Analysis, Inc.
13. March 11, 2002 letter from Mr. Moskowitz to Mr. Dennis Dickerson notifying the Regional Board that the Soil Gas Investigation Report for the First Quarter 2002 showed that soil gas concentration had increased from 32% to 42%.
14. Soil Gas Investigation Report, First Quarter 2002 (10th Sampling Event) for Pacific Distribution Center, dated March 2000 and prepared by Alaska Petroleum Environmental Engineering, Inc., showed a high level of methane (42%) from only well SV9 at 20 feet below ground surface. There are ten soil gas monitoring wells, SV1 to SV10. Concentrations of methane from other wells ranged from 0 to 6%.
15. March 12, 2002 letter from Mr. Dennis Dickerson to Ms. June Christman approving CENCO's February 15, 2002 Workplan and requesting technical assessment report by April 30, 2002.
16. March 12, 2002 letter from Mr. Dennis Dickerson to Mr. Moskowitz summarizing Regional Board action after Mr. Moskowitz's February 6, 2002 letter.
17. March 15, 2002 Status Update Report from CENCO which was received.
18. April 30, 2002 Status Update Report from CENCO which was received.
19. May 6, 2002 letter from Mr. Moskowitz to Mr. Dennis Dickerson requesting issuance of a Cleanup and Abatement Order to CENCO.
20. Soil Gas Investigation Report, Second Quarter 2002 (11th Sampling Event) for Pacific Distribution Center, dated May 2002 and prepared by Alaska Petroleum Environmental Engineering, Inc., showing that the methane level from well SV9 at 20 feet below ground surface decreased to 39%. Concentrations of methane from other wells ranged from 0.2 to 5%.

21. May 31, 2002 Regional Board staff memorandum regarding the May 6, 2002 letter from Mr. Moskowitz requesting issuance of a Cleanup and Abatement Order to CENCO.
22. July 3, 2002 letter from Mr. Dennis Dickerson to Mr. Moskowitz regarding request for Regional Board action.
23. July 30, 2002 Response Document received from Alaska Petroleum Environmental Engineering, Inc.
24. July 31, 2002 Status Update Report from CENCO received.
25. August 8, 2002 E-mail from Regional Board staff to CENCO's consultant, Mr. Russell Juncal of Ground Zero Analysis, Inc. regarding technical comments.
26. September 27, 2002 Status Update Report from CENCO received including a plan for additional soil investigation and remedial design.



California Regional Water Quality Control Board Los Angeles Region

Winston H. Hickox
Secretary for
Environmental
Protection

Over 50 Years Serving Coastal Los Angeles and Ventura Counties
Recipient of the 2001 *Environmental Leadership Award* from Keep California Beautiful

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640
Internet Address: <http://www.swrcb.ca.gov/rwqcb4>



Gray Davis
Governor

October 25, 2002

Mr. Michael J. Levy
Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814

**PETITION OF PDC NORWALK, LLC FOR FAILURE TO ISSUE CLEANUP AND
ABATEMENT ORDER FOR CENCO REFINERY, LOS ANGELES REGION
SWRCB/OCC FILE A-1490 (REGIONAL BOARD SLIC FILE NO. 318A)**

Dear Mr. Levy:

Attached is Los Angeles Regional Board staff response to the subject petition. Please let us know if you need further information in this matter.

If you have any questions or need clarification for this matter, please contact Mr. J.T. Liu at (213) 576-6667 or Mr. Paul Cho at (213) 576-6721. Please contact Mr. Robert Sams at (213) 576-6797 with respect to any legal issues. Thank you for your attention to this matter.

Sincerely,

Dennis A. Dickerson
Executive Officer

Enclosure: Response to Petition

cc: See Interested Party list and corresponding addresses

California Environmental Protection Agency

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption
For a list of simple ways to reduce demand and cut your energy costs, see the tips at: <http://www.swrcb.ca.gov/news/echallenge.html>



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MAILING LIST

Michael Lauffer, Office of Chief Counsel, State Water Resources Control Board
Robert Sams, Office of Chief Counsel, State Water Resources Control Board
Gorden Innes, Division of Water Quality, State Water Resources Control Board
David Bacharowski, Los Angeles Regional Water Quality Control Board
Arthur Heath, Los Angeles Regional Water Quality Control Board
Ju-Tseng Liu, Los Angeles Regional Water Quality Control Board
Paul Cho, Los Angeles Regional Water Quality Control Board
Frederick Latham, City of Santa Fe Springs
~~Dave Klunk~~, City of Santa Fe Springs Fire Department
Sayreh Amir, State Department of Toxic Substances Control
Larry Brown, South Coast Air Quality Management District
Ira Levin, PDC Norwalk, LLC
Joel Moskowitz, Moskowitz, Brestoff, Winston & Blinderman, LLP
CT Corporation System, CENCO Refining Company
Mike Barranco, CENCO Refining Company
Mark Miller, Robertson Properties Group
Sabrina Burton, Robertson Properties Group
David Isola, Isola Bowers LLP
Russell Juncal, Ground Zero Analysis, Inc.

California Environmental Protection Agency

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption
For a list of simple ways to reduce demand and cut your energy costs, see the tips at: <http://www.swrcb.ca.gov/news/echallenge.html>

Petition of
PDC Norwalk, LLC

SWRCB/OCC File A-1490

SWRCB
Office of Chief Counsel
INTERESTED PERSONS
MAILING LIST

09:17:02

Los Angeles
Regional Water Quality Control Board
Failure to Issue Cleanup and Abatement
Order for Cenco Refinery

Joel S. Moskowitz, Esq.
Moskowitz, Brestoff,
Winston & Blinderman, LLP
1880 Century Park East, Suite 350
Los Angeles, CA 90067-1603

PDC Norwalk, LLC
Attention: Mr. Ira Levin
Executive Vice President
120 North Robertson Boulevard
Los Angeles, CA 90048-3115

David R. Isola, Esq.
Isola Bowers LLP
701 South Ham Lane, 2nd Floor
Lodi, CA 95242

CT Corporation System
Cenco Refining Company
818 West Seventh Street
Los Angeles, CA 90017

Dennis Dickerson
Executive Officer
Los Angeles Regional Water
Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Michael J. Levy, Esq.
Office of Chief Counsel
State Water Resources Control Board
1001 I Street [95814]
P.O. Box 100
Sacramento, CA 95812-0100

Michael A.M. Lauffer, Esq.
Office of Chief Counsel
State Water Resources Control Board
1001 I Street [95814]
P.O. Box 100
Sacramento, CA 95812-0100

Bob Sams, Esq.
Office of Chief Counsel, SWRCB
c/o Los Angeles, RWQCB
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Gorden Innes, Program Support Unit
Division of Water Quality
State Water Resources Control Board
1001 I Street [95814]
P.O. Box 944213
Sacramento, CA 95812-2130

David A. Bacharowski
Assistant Executive Officer
Los Angeles Regional Water
Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Arthur G. Heath, Section Chief
Los Angeles Regional Water
Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Paul Cho
Associate Engineering Geologist
Los Angeles Regional Water
Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Sayreh Amir
California Environmental
Protection Agency
Department of Toxic Substances
Control, Region 3
1011 N. Grandview Avenue
Glendale, CA 91201

Dave Klunk
Santa Fe Springs Fire Department
11300 Greenstone Avenue
Santa Fe Springs, CA 90670

Frederick Latham, City Manager
City of Santa Fe Springs
11710 E. Telegraph Road
Santa Fe Springs, CA 90670

Larry Brown
South Coast Air Quality
Management District
21865 E. Copley Drive
Diamond Bar, CA 91765

Mike Barrance
CENCO Refining Company
12345 Lakeland Road
Santa Fe Springs, CA 90670

Sabrina Burton
Robertson Properties Group
120 North Robertson Boulevard
Los Angeles, CA 90048-3115

Mark Miller
Robertson Properties Group
120 North Robertson Boulevard
Los Angeles, CA 90048-3115

Russell Juncal
Ground Zero Analysis, Inc.
1965 Hill Road
Hornbrook, CA 96044-9773

ATTACHMENT

**LOS ANGELES REGIONAL BOARD RESPONSE TO PETITION OF PDC
NORWALK, LLC FOR FAILURE TO ISSUE CLEANUP AND ABATEMENT
ORDER TO CENCO REFINERY, 12345 LAKELAND ROAD, SANTA FE
SPRINGS
SWRCB/OCC FILE NO. A-1490 (REGIONAL BOARD SLIC FILE NO. 318A)**

This response is prepared in the same order of petitioner's argument stated in their July 9, 2002 submittal to the State Water Resources Control Board ("State Board"). Petitioner's statements are in *italic*.

I. Page 1, 2nd Paragraph to Page 2, 1st Paragraph

"At the time that the request to the Regional Board was made, the gasoline fumes were approximately 39% in air, or 390,000 parts per million in the vicinity of PDC's occupied commercial building. Nevertheless the Regional Board made no response whatsoever to the request, and continues to pursue an imperceptibly incremental, measured investigation of the refinery property in general and has not issued any directive to Cenco to abate the explosive vapors at PDC's property in particular. Absent action by this Board, PDC will not receive relief in the foreseeable future from the potentially imminent explosion that threatens life, health and property in the City of Santa Fe Springs."

Response: Prior to the request that was made by the petitioner, Regional Board staff discussed the methane issue with Cenco Refining Company ("CENCO") in October 2001 subsequently after receiving the October 25, 2001 letter from the Fire Chief of the City of Santa Fe Springs ("Fire Chief"). In addition, Regional Board staff requested the petitioner's consultant, Alaska Petroleum Environmental Engineering, Inc. ("APEEI"), to forward soil gas reports containing information on the detection of elevated levels of methane. APEEI sent a letter dated November 5, 2001 with soil gas reports to CENCO. Additionally, in the December 17, 2001 letter from Regional Board staff to CENCO, a status update of a supplemental soil investigation, preparation of a remedial action plan, and human health risk assessment workplan were requested to be submitted by January 31, 2002 in order to review CENCO's response regarding the methane issue. While waiting for CENCO's response after CENCO requested a two-week extension in the January 31, 2002 letter, the petitioner sent the February 6, 2002 letter requesting for Regional Board action. Regional Board staff immediately issued the February 8, 2002 letter requesting CENCO's soil gas remediation and technical reports per California Water Code section 13267 and Cleanup and Abatement Order (CAO) No. 97-118 issued on August 25, 1997 to CENCO Refinery. Regional Board staff also met with the Fire Chief to discuss soil gas concerns on February 8, 2002. On February 8, 2002, the City of Santa Fe Springs Fire Department ("Fire Department") performed its own sampling and

found that there was no danger from explosive levels of methane on the petitioner's property. The Fire Chief stated in his February 13, 2002 letter that he previously forwarded the soil gas report prepared by APEEI to the Regional Board without a technical review by the Fire Department, and that the department would occasionally check the area to monitor methane levels. The City of Santa Fe Springs has been requiring methane monitoring at the facility within 250 feet from an abandoned or old or both oil/gas well and 1,000 feet from a landfill. Based on CENCO's assessment report dated April 30, 2002, there are several oil/gas wells located on or near the petitioner's property where elevated levels of methane have been detected. Among the ten methane monitoring wells at the petitioner's property, only one well, SV9, located in the northeastern corner of the petitioner's property has detected elevated levels of methane at 20 feet below ground surface. Regional Board staff reviewed and approved CENCO's soil gas investigation workplan in the letter dated March 12, 2002, and are currently working with CENCO and the City of Santa Fe Springs to determine whether any offsite contamination has originated from the CENCO site as required by Provision 1 of the CAO No. 97-118 which requires cleanup and abatement of onsite and offsite soil and groundwater contamination. Therefore, CENCO has already been directed by the Regional Board to investigate any potential soil gas concerns.

II. Page 3, 1st Paragraph

"Unless this condition is characterized and abated, and interim action is taken to reduce these concentrations, the vapors present an imminent and substantial danger of explosion with consequent injury to persons and property, as well as exposure of persons to carcinogenic substances."

Response: There are ten soil gas monitoring wells, SV1 to SV10, on the petitioner's property. Based upon soil gas reports prepared by the petitioner's consultant, only samples taken at 20 feet below ground surface from the gas monitoring well SV9 have detected elevated levels of methane. On February 8, 2002, the Fire Department performed sampling and found no danger from explosive levels of methane in the vicinity of the CENCO Refinery as stated in the February 13, 2002 letter by the Fire Chief. The Fire Chief also stated in the February 13, 2002 letter that the Fire Department would occasionally check the area with a combustible gas indicator to reassure that the methane problem does not become dangerous, and that they will notify the Regional Board immediately if they find any indication of methane gas at 10% the lower exposure limit (LEL) in air or greater. To date, no elevated methane notification has been made to the Regional Board from the Fire Department.

III. Page 3, 2nd Paragraph

"Specifically, the Regional Board should be ordered to: 1. Issue a Cleanup and Abatement Order to Cenco Refining Company directing Cenco Refining Company to immediately come onto the property of PDC Norwalk, LLC and to abate the high levels of explosive gases thereon. 2. Include in that Cleanup and Abatement Order further a direction to Cenco to promptly characterize the subject methane plume and to thereafter prevent further explosive gases from reaching the property of PDC Norwalk, LLC."

Response: Provision 1 of the CAO No. 97-118 requires cleanup and abatement of onsite and offsite soil and groundwater contamination originating from the CENCO Refinery. As stated in Response 'I, Regional Board staff required additional investigations related to methane and are currently working with the City of Santa Fe Springs and CENCO to adequately respond to methane issues under the CAO No. 97-118. A final plan for the soil investigation and remedial design, which will be submitted shortly by CENCO as stated in the September 27, 2002 Status Update Report, should address all the technical concerns relating to methane. The City of Santa Fe Springs requires methane monitoring around abandoned or old or both old oil/gas wells. It would not be reasonable to direct CENCO to abate elevated levels of methane on the petitioner's property based upon samples taken at 20 feet below ground surface from only one soil vapor monitoring well showing elevated levels of methane. In addition, we believe it is not appropriate to require CENCO to characterize the methane plume at the petitioner's site without evaluating potential methane source(s) at the CENCO site and the 'methane zone' identified by the City of Santa Fe Springs. The soil gas assessment is on-going as stated and all necessary technical requirements will be addressed to CENCO pursuant to Provision 1 of the CAO No. 97-118. Therefore, the petitioner's request is redundant.

IV. Exhibit B, Page 1, 2nd Paragraph

"PDC's latest quarterly monitoring report, prepared in response to the City of Santa Fe Springs methane monitoring requirements, showed that high levels of explosive gases (up to 39%) had migrated from the Cenco refinery property to PDC's property. Other reports referenced therein show that this migration has similarly impacted other neighboring facilities, including those owned by the Carson Company and the State Hospital."

Response: There are abandoned or old or both old oil/gas wells and a landfill within the neighboring facilities. Methane has been detected from soil vapor monitoring wells from these neighboring facilities according to the City of Santa Fe Springs. Based upon a summary presented in the July 31, 2002 Status Update Report by CENCO, the California State Division of Oil and Gas requires abandoned or old or both old oil/gas wells to be re-abandoned whenever new construction or land use changes occur due to documented problems in the Santa Fe Springs former oil field and elsewhere where methane concerns have been identified such as the Fairfax area in Los Angeles. Well Exxon #4, located in

the north-central portion of the Coaster property (12330-12434 Lakeland Boulevard, Santa Fe Springs), for example, was re-abandoned in 1988 and required to have a venting system which consists of a vent cone with piping along the building wall that terminates above the roof line as required by the California State Division of Oil and Gas. Based on previous monitoring of the top of the vent pipe for the Well Exxon #4, a methane reading of 23% LEL was recorded. Levels of up to 10% methane by volume also have been detected at sites adjacent to the Kalico #1 Landfill located southeast of the CENCO Refinery. The soil gas assessment related to the detection of elevated levels of methane is on-going in order to properly investigate methane concentrations. It is, therefore, premature to conclude at this time without further investigation that high levels of explosive gases have migrated from CENCO to the petitioner's property and other neighboring facilities.

V. Exhibit B, Page 2, 4th Paragraph

"This Order should specify Cenco must begin characterization by replicating the samples obtained by Alaska Petroleum Environmental Engineering at the location where those samples were taken – not in a planter box. It should further direct the Regional Board to require Cenco to characterize the vapor plume at PDC's property – not vapor in the ambient air in the neighborhood, or vapor at the huge refinery property in general. During this process, the State Board should direct the Regional Board to comply with the Public Records Act and furnish the requested documents to PDC."

Response: In the letter dated July 3, 2002, Regional Board staff requested the petitioner for any information the petitioner might have indicating that the migration of methane from the CENCO Refinery has moved onto the petitioner's property. Regional Board staff requested this information because, based on a review of the investigation data collected by CENCO to date, it is not clear whether soil gas is migrating from the CENCO Refinery to the petitioner's property. In order to address the petitioner's claims of methane migration, CENCO proposed further investigation (April 30, 2002 Status Update Report) including obtaining additional soil gas data around point sources and correlating methane data obtained from well casings to the dissolved hydrocarbons in groundwater. On July 30, 2002, APEEI submitted on behalf of the petitioner its response to the July 3, 2002 Regional Board staff letter. APEEI claimed that the free product and its degradation and subsequent migration from the CENCO Refinery is the primary cause of the elevated concentrations of methane at the petitioner's property based on the fuel hydrocarbons detected from the soil gas monitoring well SV9. CENCO submitted the July 31, 2002 Status Update Report indicating that the dissolved methane and gasoline hydrocarbons, and wellhead methane readings were not strongly correlated. CENCO submitted the September 27, 2002 Status Update Report stating that they would submit a workplan for additional soil investigation for fuel hydrocarbons and that the areas of the highest soil gas concentrations identified during the investigation would be mitigated by soil vapor extraction. CENCO performed ambient air sampling on February 28, 2002 and March 1, 2002 at and downgradient of the refinery to identify conditions that might

ATTACHMENT

present a fire or explosive/hazard situation and to assist in evaluating the potential for methane in soil gas at depth in soil to migrate to the surface. This ambient sampling was a part of the proposed investigation, including vapor transport analysis, vapor monitoring of groundwater monitoring wells, soil gas source evaluation, gas fingerprinting, and groundwater and vadose zone monitoring, in the previous workplan which was approved by the Regional Board staff on March 12, 2002. The petitioner claimed that the Regional Board did not submit information to them under the Public Records Act. The petitioner has also been informed by Regional Board staff in letters dated March 12, 2002 and July 3, 2002 regarding actions taken by the Regional Board. Copies of the letters from the Regional Board staff to CENCO were also sent to the petitioner. Every public file review request is processed according to the established Regional Board file review procedures for the Public Records Act.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA, ex)
rel. Edwin F. Lowry, Director, California)
Department of Toxic Substances Control and City)
of Santa Fe Springs,)

No. BC 230158

JUDGMENT PURSUANT TO
STIPULATION

Plaintiffs,
v.

CENCO REFINING COMPANY, a Delaware)
Corporation, POWERINE OIL COMPANY, a)
California Corporation and Does 1-10,)

Defendants.

Plaintiff, People of the State of California, ex rel. Edwin Lowry, Director, Department of Toxic Substances Control ("the Department" or "the Department"), and Defendants CENCO Refining Company ("CENCO") and Powerine Oil Company ("Powerine") (collectively "Defendants") having presented and filed with the Court a written Stipulation for Entry of Final Judgment (the "Stipulation"), and good cause appearing for approval of said Stipulation,

IT IS HEREBY ORDERED that judgment is awarded in favor of Plaintiff and against Defendants on the portions of the first and second causes of action identified in sections 12.1.1 and 12.1.2 of the Stipulation and for civil penalties and enforcement-related costs in the amount of \$1,000,000. A copy of the Stipulation, without attachments, is attached to this

CONFORMED COPY

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1 judgment and is incorporated by reference.

2 IT IS FURTHER ORDERED that Defendants shall make payment of the civil penalties
3 and costs as described in sections 5 and 6 of the Stipulation.

4 IT IS FURTHER ORDERED that

5 the Third Cause of Action against Defendants CENCO and Powerine is
6 dismissed with prejudice;

7 the First Cause of Action against Defendant Powerine is dismissed without
8 prejudice, except as it applies to tanks 10006, 27105, 1002, 2030, 3012, and
9 3072 at the Lakeland Road Refinery; and

10 the Second Cause of Action against Defendant CENCO is dismissed without
11 prejudice, except as it applies to tanks 10006, 27105, 5516, 96109, 96110,
12 1002, 2030, 3012, and 3072 at the Lakeland Road Refinery.

13 IT IS FURTHER ORDERED THAT

14 1. Subject to Section 10 of the Stipulation, Defendants shall do all of the following. The
15 work described in this section shall be known as the "Tank Closure."

16 1.1. Defendants shall empty and clean Tanks 10006, 27105, 5516, 96109 and 96110
17 at the Lakeland Road Refinery. Defendants shall clean the tanks in the order
18 listed unless Defendants receive permission in writing from the Department to
19 proceed in a different order. Defendants and their agents shall comply with the
20 requirements of section 1.7 of this Order.

21 1.2. Defendants shall retain one or more engineering or tank cleaning firms to do the
22 Tank Closure, which firm(s) shall have appropriate certifications, qualifications,
23 experience and indemnity and liability insurance. The costs, charges and
24 expenses of the Tank Cleaning firms and their subcontractors, including any costs
25 associated with sampling, analysis or performance of pilot tests in conjunction
26 with the Tank Closure, shall be known as "Third Party Tank Closure Costs."
27 Third Party Tank Closure Costs are subject to the restriction of the following
28 paragraph.

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- 1.3. Third Party Tank Closure Costs shall not include any money paid, or to be paid, to CENCO or Powerine employees or any other internal costs or expenses incurred by CENCO or Powerine in conjunction with the Tank Closure Project. Nothing herein shall prevent qualified CENCO employees from performing any part of the Tank Closure work.
- 1.4. Unless, pursuant to section 10.3 of the Stipulation, Defendants receive authorization to halt Tank Closure, Defendants shall send out requests for proposals for the Tank Closure Project no later than thirty-one (31) days after the Effective Date of this Stipulation. Defendants shall begin actual field work no later than 91 days after the Effective Date of this Stipulation.
- 1.5. Unless, pursuant to section 10.3 of the Stipulation, Defendants receive authorization to halt Tank Closure, within sixty days of the Effective Date, Defendants shall submit a workplan, including a worker health and safety plan, and schedule describing how they will conduct the work required by this section.
- 1.6. Unless, pursuant to section 10.3 of the Stipulation, Defendants receive authorization to halt Tank Closure, Defendants shall complete the work required by section 1.1 of this Order no later than December 31, 2002.
- 1.7. Defendants and their agents shall complete the Tank Closure, and all work conducted pursuant to this Stipulation, in accordance with the HWCL and all applicable local, state and federal laws.
- 1.7.1. Defendants may discharge water contained in Tanks 10006 and 27105 to the Lakeland Road Refinery's wastewater treatment system provided such discharge is in accordance with the terms of CENCO's industrial discharge permit issued by the Los Angeles County Sanitation District. Defendants may temporarily place all free oil removed from the Tanks 10006 and 27105 in Tank 20014. Upon completion of the Tank Closure, Defendants shall send that oil off-site for recycling or disposal at an

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authorized facility. Defendants and the Department shall presume that all solids removed from Tanks 27105 and 10006 are characteristic hazardous wastes. However, if Defendants demonstrate through sampling and analysis, to the satisfaction of the Department, that the solids do not exhibit any characteristic of hazardous waste, and the Department provides Defendants with a written statement to that effect, Defendants and their agents may manage those solids as non-hazardous waste. The sampling and analysis shall be conducted in accordance with California Code of Regulations, title 22, Division 4.5, Chapter 11, Article 3, including the standards of the then-current version of the United States Environmental Protection Agency publication "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," SW-846. Defendants shall not commingle solids from Tanks 27105 or 10006 with any listed hazardous wastes.

1.7.2. Defendants and their agents shall manage all sludge and solids removed from tanks 96109 and 96110 as RCRA hazardous waste K169.

1.7.3. Defendants and their agents shall manage all materials removed from tank 5516 as RCRA hazardous waste K170.

1.7.4. If Defendants or their agents dismantle any of the tanks identified in sections 1.1 or 1.8 of this Order they shall do so in accordance with the standards and procedures of California Code of Regulations, title 22, section 67383.3, subsections (b) through (f).

1.7.5. Defendants and their agents shall take all appropriate precautions to minimize odors during the removal process.

1.8. Defendants shall also clean Tanks 1002, 2030, 3012, and 3072, and shall complete the work required by this section no later December 31, 2002. Residues from the spent caustic tanks (Tanks 1002 and 2030) may be washed to the refinery's wastewater treatment system. Solids from the recovered oil tanks

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- (Tanks 3012 and 3072) shall be managed in the same manner as the solids from Tanks 10006 and 27105.
- 1.9. Beginning in the first month following the Effective Date and continuing until Defendants receive the certification and release specified in section 1.10 of this Order, Defendants shall submit monthly progress reports to the Department describing their progress with the Tank Closure project. The report shall be due on the 15th day of each month and shall describe the activities completed during the prior month.
- 1.10. Upon notification from Defendants that Tank Closure is complete, the Department will inspect or otherwise evaluate the Tanks. If the Department determines that Defendants have completed the Tank Closure, the Department will send Defendants a written certification and release to that effect. The Department will not unreasonably withhold the written certification and release. Defendants' obligation to complete the tank closure shall terminate upon issuance of the certification and release.
2. Within 10 business days following the Effective Date, CENCO shall deposit no less than \$1,490,000 into an interest-bearing trust account, to be known herein the Lakeland Road Tank Closure Account. The sole and governing purpose of the Lakeland Road Tank Closure Account and the funds contained therein shall be to pay the Third Party Tank Closure Costs described in section 7.2 of the Stipulation and to pay the Department's oversight costs.
- 2.1. Money in the Lakeland Road Tank Closure Account may be expended only as follows.
- 2.1.1. Funds in the Lakeland Road Tank Closure Account shall be used to pay only Third Party Tank Closure Costs, as defined in section 1.2 of this Order and Department oversight costs.
- 2.1.2. If, at any point, it appears that Defendants shall expend more emptying and cleaning an individual tank than the amount specified in

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Attachment B of the Stipulation for that tank, Defendants shall so inform the Department in the next monthly progress report required by section 7.9 of the Stipulation.


IT IS FURTHER ORDERED that within 15 days after the Effective Date, Powerine shall assign the Department its judgment lien on the Bloomfield property to cover potential deficiencies in the amount of funding available for Tank Closure.

IT IS FURTHER ORDERED that, except with respect to extensions of time granted by the Department pursuant to section 21 of the Stipulation, the terms of this order may be modified only by order of this Court.

Except with respect to Defendants' obligation to reimburse the Department for \$100,000 of its enforcement-related costs, each party shall bear its own costs leading to the entry of this Judgment.

DATED:

5-20-02


The Honorable Daniel Solis Pratt
JUDGE OF THE SUPERIOR COURT

Prepared by:

BILL LOCKYER, Attorney General
of the State of California
RICHARD FRANK
Chief Assistant Attorney General
THEODORA BERGER,
Senior Assistant Attorney General
JAMES R. POTTER, State Bar No. 166992
Deputy Attorneys General
300 South Spring Street, Suite 500
Los Angeles, California 90013
Telephone: (213) 897-2640
Attorneys for Plaintiff